

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID ARTHUR BROWAND,

Petitioner,

v.

GENA JONES,

Respondent.

No. 2:21-cv-00184-DAD-EFB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
RESPONDENT'S MOTION TO DISMISS
CERTAIN CLAIMS

(Doc. Nos. 34, 38)

Petitioner David Arthur Browand is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 26, 2023, the assigned magistrate judge issued findings and recommendations recommending that respondent's motion to dismiss claims one, two, and three of petitioner's third amended petition (Doc. No. 34) be granted on the grounds that those claims are untimely. (Doc. No. 38 at 1.) The magistrate judge further recommended that this action proceed only on claims four and five as alleged in the third amended petition. The magistrate judge noted that, in his opposition to respondent's motion to dismiss, petitioner conceded that his first three claims are untimely and should be dismissed, and he requested that this action proceed on his fourth and fifth claims. (*Id.*) Respondent agreed with that approach. (*Id.*) The pending findings and recommendations were served upon the parties and contained notice that any objections thereto

1 were to be filed within fourteen (14) days after service. (*Id.* at 2.) To date, neither party has filed
2 any objections and the time in which to do so has passed.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
4 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
5 pending findings and recommendations are supported by the record and proper analysis.
6 Accordingly, respondents' motion to dismiss petitioner's first three claims as untimely will be
7 granted.

8 Accordingly,

- 9 1. The findings and recommendations issued on May 26, 2023 (Doc. No. 38) are
10 adopted in full;
- 11 2. Respondent's motion to dismiss claims one, two, and three of the third amended
12 petition (Doc. No. 34) is granted;
- 13 3. This action proceeds on claims four and five in the third amended petition;
- 14 4. Respondent shall file and serve an answer to claims four and five in petitioner's
15 third amended petition within sixty (60) days from the date of entry of this order;
- 16 5. Petitioner's reply, if any, shall be filed and served within thirty (30) days of the
17 date of service of respondent's answer; and
- 18 6. This action is referred back to the assigned magistrate judge for further
19 proceedings.

20 IT IS SO ORDERED.

21 Dated: July 20, 2023

22 
UNITED STATES DISTRICT JUDGE